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No. 250

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In the Supreme Court of the United States

OCTOBER TERM, 1954

ANTHONY TONY SICURELLA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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OPINION BELOW

The opinion of the Court of Appeals (Pet. 18-23) is not yet recorded.

JURISDICTION

The judgment of the Court of Appeals was entered June 15, 1954. The time for filing a petition for a writ of certiorari was extended to August 14, 1954. The petition was filed on July 30, 1954. The jurisdiction of this Court is invoked under 28

U. S. C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTION PRESENTED

Whether petitioner's statement, in accordance with the general tenets of Jehovah's Witnesses, that he would fight in defense of "Kingdom interests" but could not submit to any military establishment or substitute civilian service arrangement constituted a sufficient basis for denial of his claim to classification as a conscientious objector.

STATUTE INVOLVED

Section 6(j) of the Universal Military Training and Service Act, 62 Stat. 604, 612; 65 Stat. 75, 86 (50 U. S. C. App. 456(j)) provides in pertinent part:

Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose

claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * *. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the Presi-

dent, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * *. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. * * *

STATEMENT

Petitioner seeks review of the judgment of the United States Court of Appeals for the Seventh Circuit affirming the two-year sentence imposed by the United States District Court for the Northern District of Illinois after trial without a jury on a charge of failure to submit to induction in the armed forces (R. 5, 15-16, Pet. 18-23).

The pertinent facts are as follows:

Petitioner, who was born on June 13, 1927, registered with his local selective service board on Sep-

tember 11, 1948 (R. 51-52). In his classification questionnaire he claimed to be a minister of Jehovah's Witnesses and a student preparing for the ministry (R. 55-56). He also stated that he worked 44 hours per week as a file clerk for the Railway Express Agency (R. 56-57). He did not at that time claim deferment as a conscientious objector (R. 57). He was at first given the ministerial classification of IV-D, but on October 9, 1950, was reclassified I-A, a classification which was continued after personal appearance before his local board and which was affirmed by the appeal board on January 26, 1951 (R. 58-59).

Thereafter, on February 9, 1951, petitioner filed with the local board the special form for persons claiming to be conscientious objectors (R. 76-83).¹ In response to Question 5 as to the circumstances under which he believed in the use of force he said (R. 77):

Only in the interests of defending Kingdom Interests, our preaching work, our meetings, our fellow brethren and sisters and property against attack. I (as well as all Jehovah's Witnesses) defend those when they are attacked and are forced to protect such interests [sic] and scripturally so. Because in doing so we do not arm ourselves or carry carnal weap-

¹ Petitioner testified at the trial that he did not claim to be a conscientious objector when he first filled out his questionnaire because he thought he could not claim both conscientious objector and ministerial status and he was more interested in the ministerial claim (R. 19).

ons in anticipation of or in preparation for trouble or to meet threats.

He also stated (R. 78):

And in being wholly dedicated to Jehovah God through Christ, I have become no part of this world which is governed by political systems. For this important Bible reason I am telling you that I conscientiously object to serving in any military establishment or any civilian arrangement that substitutes for military service * * *.

Petitioner's case was reconsidered by the local board at the direction of the State Director (R. 83-84). He was then placed once more in class IV-D, but, after the State Director had advised that the petitioner did not meet the ministerial requirements (R. 85-86), he was again placed in I-A (R. 59). This classification was continued after various personal appearances by the registrant (R. 59-60, 86-96).

In connection with his appeal from this I-A classification, petitioner's claim to deferment as a conscientious objector was forwarded to the Department of Justice for investigation and report pursuant to Section 6(j) of the Universal Military Training and Service Act. The Department reported that the hearing officer "stated he was convinced that registrant has sincere objections to military service by reason of his religious training and beliefs and he recommended a I-O classifica-

tion." (R. 100-101.) The Department itself, however, did not so recommend, finding that "While the registrant may be sincere in the beliefs he has expressed, he has, however, failed to establish that he is opposed to war in any form. As indicated by the statements on his SSS Form 150, registrant will fight under some circumstances, namely, in defense of his ministry, Kingdom interests, and in defense of his fellow brethren. He is, therefore, not entitled to exemption within the meaning of the Act." (R. 101.)

Petitioner was thereafter classified I-A by the Appeal Board (R. 101-102). When ordered to report for induction, he reported but refused to submit to induction (R. 102-103, 104-105).

The trial court found petitioner guilty of willfully failing to report (R. 15-16). In affirming that judgment on appeal, the Court of Appeals for the Seventh Circuit held that it could not "say that the appeal board's denial of appellant's claim was without basis in fact" (Pet. 19). It recognized that other circuits had voided classifications refusing conscientious objector status to registrants who had expressed belief in the use of force in self-defense and in theocratic warfare² but thought that those cases rested on an incorrect theory of the scope of judicial review (Pet. 20). The court ruled that "Whether or not appellant's

² *United States v. Taffs*, 208 F. 2d 329 (C.A. 8), certiorari denied, 347 U.S. 928; *United States v. Hartman*, 209 F. 2d 366 (C.A. 2); *United States v. Pekarski*, 207 F. 2d 1360 (C.A. 2); *Annett v. United States*, 205 F. 2d 689 (C.A. 10).

willingness to use force in defense of 'Kingdom Interests' is incompatible with a claim of conscientious objection to participation in war, his statement is an appropriate factor for the board to consider when ruling on his claim as bearing on the question whether he has brought himself within the statutory privilege." And the court further held that petitioner's statements that he objected to serving in any military establishment or civilian arrangement that substitutes for military service "were consistent only with objections to any command of governmental authority" and "do not *per se* establish that deep-seated conscientious belief which would entitle appellant to the claimed exemption" (Pet. 21).

DISCUSSION

1. As petitioner contends, and as the Court of Appeals recognized, the opinion below is in conflict with those of other circuits, cited at footnote 2, *supra*, p. 7, including *United States v. Taffs*, 208 F. 2d 329 (C. A. 8), in which the Government's petition for a writ of certiorari was denied, 347 U. S. 928.³

³ The decision in the instant case is difficult to reconcile with a later decision by another panel of the same circuit in *Wilson v. United States*, No. 11086, decided July 15, 1954. In the *Wilson* case the registrant, a member of Jehovah's Witnesses, stated in his special form for conscientious objectors that he was not a pacifist and would fight for a theocratic government, but not for the unrighteous wars of this world. The local board and the state appeal board granted him a I-O (conscientious objector) classification. The Presidential Appeal Board, however, directed that he be classified I-A. While the Board did not state its reasons, this direction was in accord with its view, which we discuss below in the text at p. 12, that Jehovah's

We do not believe, as did the court below, that the differences in results stem from differing concepts of the scope of judicial review. All of the decisions recognize in principle the doctrine of *Estep v. United States*, 327 U. S. 114, 122, that the decisions of the selective service system are final even though they may be erroneous unless there is no basis in fact for the classification. The conflict has occurred because of a difference as to the sufficiency of a complex of facts common to Jehovah's Witnesses draft cases. The other circuits have held that refusal of conscientious objector classification to sincere members of Jehovah's Witnesses

Witnesses who merely adopt as their own the published views of the group (that they will fight only in such wars as their religious organization considers approved by God) are not entitled to a conscientious objector classification. On this basis, the district court denied a motion for judgment of acquittal. The Court of Appeals, however, reversed, holding that there was in the record no basis for denial of the conscientious objector classification. The result in *Wilson* can possibly be reconciled with the reasoning of the decision in the instant case on the view that (a) willingness to fight in theocratic war is a factor which a board may properly consider but need not necessarily find inconsistent with a claim to conscientious objector status, but that (b) a court should not conjecture as to the basis on which the National Board acted when it rendered no opinion in reversing the local and state boards. However, the decision in *Wilson* seems in terms to go further and accept such cases as *Taffs* as reflecting a view of the law with which the court agrees, contrary to the position of the court in the instant case.

A petition for rehearing has been filed in the *Wilson* case, but is as yet undecided. A petition for rehearing is also pending in the similar case of *Close v. United States*, decided June 10, 1954, by the Seventh Circuit. The differing views within the Seventh Circuit emphasize the need for authoritative clarification of the law in this field.

is without basis where the denial of the claim is supported on the record only by the fact that the registrant, in adherence to the tenets of his sect, has indicated a willingness to fight in defense of himself, his family and his sect, or, as it has sometimes been expressed, in theocratic wars. The court below, on the other hand, has held that willingness to engage in combat in defense of person, family and sect is a factor which may properly be considered in determining the validity of a claim to conscientious objection, and that, without more such willingness plus expressed opposition to all forms of governmental authority furnishes sufficient basis for the I-A classification and denial of the claim of conscientious objection.⁴

The various registrants use differing terminology to express their convictions, with the result that the court decisions are also somewhat variously phrased. The essence of the question in all these cases, however, is whether sincere adherence to the tenets of Jehovah's Witnesses, as expressed in the pronouncements of the sect, with no indication that the individual registrant has personal views going beyond the official pronouncements, is sufficient to establish that the registrant is opposed to "war in any form" and entitled to classification as a conscientious objector. That was the question

⁴ The latter ground mentioned by the court below—opposition to all forms of governmental authority—is not expressly dealt with in the decisions from the other circuits, but has almost always been present factually. It was a factor to which the Government called attention in its petition in the *Taffs* case, No. 576 O.T. 1953, pp. 15-16.

which the Government presented in the *Taffs* petition at a time when there was no conflict of decisions among the circuits.⁵ A conflict is now presented by the instant decision, and, for that reason, the Government does not oppose the granting of the petition and consideration of the issue by the Court at this time.

2. The question is one of continuing importance. As indicated in the *Taffs* petition, the Department of Justice in its instructions to hearing officers for conscientious objector cases, a copy of which was annexed to that petition as Appendix B, had taken the position that, while individual members of Jehovah's Witnesses might be conscientious objectors on the basis of personal views, adherence to the general doctrines published in the *Watchtower*, the Witnesses' organ, did not itself show "opposition to war in any form" as required by the statute to sustain a conscientious objector classification. After the denial of certiorari in the *Taffs* case, and in the light of that denial, the Department withdrew its former instructions on the subject, in effect accepting the decision of the Eighth Circuit in *Taffs* as the controlling interpretation of the draft law for Jehovah's Witnesses.

⁵ The question was phrased in the *Taffs* petition (No. 576, O.T. 1953, p. 2) as follows:

"Whether the objections of a registrant under the Universal Military Training and Service Act to participation, not in all wars, but in any war which is not approved by God, which objections are expressly based upon the doctrines expounded by Jehovah's Witnesses, require his classification as a conscientious objector."

However, the National Appeal Board, established to exercise the authority given to the President under Section 10 of the Universal Military Training and Service Act, 50 U. S. C. App. 460, does not regard the *Taff's* decision as binding; in such cases as come before it for decision it still rules that those members of Jehovah's Witnesses who merely adopt as their own the published views of the group that they will fight only in such wars as their religious organization considers approved by God, are not persons who establish "opposition to war in any form" within the statutory definition. It is therefore important, both to the registrants and the Selective Service System, that the question be authoratively determined by this Court.

3. One additional point merits clarification. In the petition for certiorari in the *Taff's* case, the Government stated that it did not seek review of the holding of the court in that case "that the expressed willingness of the registrant and other Jehovah's Witnesses to use force, even to the extent of killing, in self-defense or in defense of home, family, or associates, does not of itself exclude them from the classification of conscientious objectors." (No. 576, O.T. 1953, p. 11.) This view was embodied in the instructions to hearing officers referred to in the *Taff's* petition and the Government still adheres to it. The Government does not, however, view this case as presenting only that factor. The recommendation of the Department of Justice against grant of the conscientious objector classification was based on the registrant's willingness to fight "in defense of his ministry,

Kingdom interests, and in defense of his fellow brethren." Willingness to use force in defense of self or family is not mentioned. We interpret petitioner's statements to the draft board as meaning more than a willingness to fight in self-defense and as presenting, although less voluminously and less articulately, the same general position as that presented in *Taffs*, i.e., the position of a sincere member of Jehovah's Witnesses whose personal views with respect to war coincide with but do not go beyond the published views of the group which retains the right to fight in a theocratic war or in defense of "Kingdom interests." This interpretation is supported by petitioner's own statement explaining the extent to which he was willing to use force. He said "I (as well as all Jehovah's Witnesses)," thus indicating that he thought of his position as coinciding with that of the group as a whole.

CONCLUSION

For the reasons stated, the government does not oppose the granting of the petition for a writ of certiorari with respect to the question discussed in this memorandum.

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AUGUST, 1954.